MELT, SOMDAT'S EXCEPTED, TED AND PUBLISHED BY THE DESERET NEWS COMPANY ARLES W. PENROSE, EDITOR. Feb. 25, 1881

ENING NEWS.

HOW THE MATTER STARDS

THE decision rendered by Judge S P. Twiss in the mandamus case is not fully understood by the masses of the people, and we therefore offer an explanation of its main features that the weight of authorities are with some remarks in relation to with him in his conclusions concernthe matter involved in the proceedng the power of the Court over the

Executive in discretionary acts, and The object of the petition asking consider that he has carefully and for the writ, was to compel the Actfairly cited them and drawn just ing-Governor-the Governor bring conclusions from them. But we absent-to issue a certificate of elec tion to George Q. Cannon, the person officially declared to have receiv. ed the greatest number of votes at the last election. The paper purporting to be a certificate issued to Allen G. Campbell was viewed by equired to find out who has the the petitioners as void, not being in greatest number of votes, declare accordance with law, in that it conthat person elected and issue a certained a proviso not contemplated in the law, and by the insertion [of which the object of the law was defeated. The Governor having refused to do that which the law required him to 'perform, subtraction, and the enunciation of the only remedy open for the the result. injured parties-that is, the person

who received the greatest number of anything in the law defining where there is no law, Federal or Territorvotes and the people who voted for and how judgment and discretion him-was an appeal to the judicimay be exercised by the Governor, ary.

is cited by the Judge to prove that Mandamus is a writ from a superijudgment and discretion are requiror court to an inferior court, or to ed. In! the judgment of the Court, some person or corporation within a copy of which is given below, a copy of which is given below, jurisdiction, by mandamus, to con-Judge Twiss says it is considered trol him in the sphere of his executhe jurisdiction of the superior court. requiring the performance of a spethat the duties of the Governor in ciffenet which has been judicially this matter are not merely ministedetermined to be proper add neces rial, "since there is no law, Federal sary; it is designed to prevent evils or Territorial, directing upon what arising from a failure of justice, and evidence the inquiry and decision is to be used "upon all occasions shall be made." Exactly, for there where the law has established no is no "inquiry" to be made and no specific remedy and where in justice "decision" to be rendered requiring in law to require the respondent to aud good government there ought any direction. What is the inquiry? to be one."

Simply to find out how many votes In this case an alleged certificate were cast according to the returns. of election had been given to a per-What is the decision? Simply who son not elected - a gross perversion of justice, and though this does not is the person having the greatest It is further ordered and adjudged secure the seat in Congress to the number of votes. What law is holdsr of the fraudulent paper, it wanted, Federal or Territorial, to costs of this suit. may be used as prima facle evi- direct such an inquiry and such a decision? The arithmetical rules dence of 'election, and, if accepted addition and subtraction are all that as such, enable the person holding it to occupy the position to which is needed. Any inquiry and decision outside of this ministerial matter of another has been elected, until the House of Representatives can find counting the votes and determining which candidate has the greatest time and occasion to pass upon the number, would be altogether forcase. Thus, while there is a remedy eigh to the duties prescribed by law Belford Assacking the Railroad No. so far as the ultimate possession and for the Governor, and therefore any right to the seat is concerned, there directions in law concerning such. is none in law for the wrong would be altogether superfluous. In occasioned by the failure of justhis case the Governor undertook to tice in giving the false certificate make an inquiry and make a deciand in the use of it to gain temposion on something for which he rary possession of the seat. Mandacould not find a sentence of law au-thorizing his action, and no wonder he could find no law directing him mus, then, was the method by which these wrongs could be righted, and the writ asked for was to how to act in such extraordinary Southern district of New York which the law required him to perform, and which he had refused to perform. We would like Judge Twiss or any If the Court had issued the write other person who thinks the Gov. and the Executive had complied ernor's duty in this matter to be with the mandate, the person electanything but ministerial, to show ed would have a certificate in due us the law defining or conferring form of law as an offset to one not anything more than ministerial power upon the Executive after the big in the form of law. Then either the improper certificate or both would election returns are in his be excluded. In either case the hands. The Judge has made fraudulent Delegate would not be copious reference to authori-ties on the question which we think no sound lawyer will dispute, but he quotes nothing whatever to prove that the Governor's acts in this aworn in, and consequently would not occupy the seat either permanently or temporarily. If it be asked why not wait and let the House deolde on the merits of the case, the matter are anything more than answer will be because this is all ministerial. And the only point in that the parties to the conspiracy his argument on this question that he cites to support his position, is logically conclusive against it. Yet his argument on this question that against popular rights in this Territory have schemed to accomplish. They do not expect to obtain the on this unsound and unsupported seat for their candidate, permanentview of the Governor's duty in makly, but they have planned to gain ing the count, is based the whole de possession of it for the time being, cision which denies the mandamus draw the pay, and by pulling all the If the Governor's duties in this wires that they can reach, postpone matter are simply ministerial, the the Congressional test of the case mandamus can be issued; nothing is just as long as possible. The writ cited to prove that they are anyasked for was then the only legal thing else; yet the unsupported hyprocess by which a remedy for this pothesis is put forth that those duwrong could be obtained. ties are judicial and discretionary,

cannot command the performance in a specified way of a discretionary act, it can command the perform-ance of a ministerial duty. Here then is where the whole question in dispute hinges. Is the political institutions, and it is time and sputter and mugh in a perfect carnival of terror. As the terrified inmates of the boats approached the fatal spot, like a flash the boat sud-denly darted out of the eddy straight to the fall—one minute and the boat et which it is sought to require the that a radical change should be made

Executive to perform ministerial or and the un-American anomaly be discretionary? How are we to find expunged from the government of this out? How is this point to be the United States. settled? Judge I'wiss says that, in his opinion, the declaring of a person THE MANDAMUS CASE. lected and the issuing of a certificate are acts requiring the exercise JUDGMENT OF THE COURT. of judgment and discretion, and on this opinion his decision is In the District Court for the Th rd

Judicial District of Utah Terribased. We do not think there are many judicial minds that will coincide with his view. We believe The People of the Territory of Utah, on the relation of Geo.

Q. Cannon. Arthur L. Thomas

Acting Governor of Utah. The demurrer of said respondent to the alternative writ of mandate issued and served in this action, certainly fail to see how the plain having been heretofore argued by and mandatory language of the J. G. Sutherland and P. T. Van statute defining the Governor's duty in the matter under dispute can be having duly considered the same, construed to convey judicial and and it not appearing in and by said alternative writ, that when the demand therein mentioned was made, and when this writ was commenced, the respondent was emto act and acting powered tificate accordingly. There is no-thing in the law allowing him any discretion or pointing out anything on which to exercise judgment. It tory, in the matter of declaring who is a simple matter of addition and has received the greatest number of

votes for the office of Delegate to Congress, are such as to require the

Yet, strange to say, the absence of and are not merely ministerial, since ial, directing upon what evidence the inquiry and decision shall be and pretty and fresh, and the grass-hoppers would swoop down and take it all. But I never flinched. That made; and it being also considered that the Governor of said Territory is the chief officer of a co-ordinate and independent branch of the government, and that this court has no earth tive duties requiring the exercise of discretion; therefore, as the objections raised by said demurrer canno be removed by amendment, and no motion for leave to amend having been made in behalf of the relator; It is ordered and adjudged that the said demurrer be sustained; that the said alternative writ is not sufficient show cause as therein required, nor to entitle the relator to have and

maintain this action for a peremptory writ of mandate, and that the respondent go thereof without day. again. The grasshopper plague was taken away, and I says to my neighbors, says I: 'Don't you see it is better to trust in the Lord?' He CAUTION. by unprincipaled dealthat the respondent have and recover against the said People his

STEPHEN P. TWISS, Judge.

NOTICE.

PROBATE COURT FOR SAID COUNTY In the Matter of the Estate of Eliza Lees deceased.

County of Salt Lake.

BERRAMORZ LITTLE EXECUTOR OF the Estate of Elina Lees, deceased, hav-T the factor of presented for settlement, and filed in this Court, his final account, and filed therewith a report of his administration of said Estate together with a petition pray-ing that upon the settlement of said account. would be dashed to pieces, but, as if guarded by the hands of Providence, To be to and among those entitled. It is ordered that Monday the 28th day of February, 1851, at 10 a. m. at the Count Court House, Salt Lake City, be and is here by appointed for the settlement of said ac

the boat caught on a sunken rock just on the verge of the fail, and ly-ing there swinging with the motion of the waters, but leaving the men owerless, facing death, and while aved from it unable to escape. It saved from it unable to escape. It was at this moment that a new danger, and one that made the cer-tainty of being carried over the falls inevitable, presented itself. Coming down the river, and al-most on the top of the boat was discovered an immense floe of ice. The almost certainty of death either by being carried over the rocks or else crushed to pieces in the ice was only left to choose, and before the engineer and his party could realize it the ice was upon them, and one Dated February 16, 1881. E. SMITH,

Probate Judge

3603 E

adT-M

toffe: 'li

13 TA 2 9 1

TERRITORY OF UTAH, County of Salt Lake. I, D. Bockholt, Clerk of the Probate Court and for the County of Salt Lake, in the territory of Utah, do hereby certify that the pregoing is a full, true and correct copy of the original order of mid Count in the copy of it the ice was upon them, and one immense cake had shot under the the original order of said Court, in the matter of the Estate of Eliza Lees, deceased, on file and as appears of record in my office. In Witness Whereof, I have hereboat lifted it over the sunken rock and ice, and boat and men were car-

unto set my hand and affixed the seal of said Court, this 17th day of February, A. D. 1881. SEAL, D. BOCKHOLT, By W. S. CRISMON,



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Extract from Report of the Commissioner Internal Revenue:

when lots of the farmers were sell-ing out their lands to land-sharks, I took the seed and sowed it, just as confident like as though I'd always had good crops, and I said, when I got it all done: 'I'll trust Him, though He slay me.' My neighbors said I was a fool, but I only smiled and looked to God, and that year I raised 600 bushels of wheat, and soon was well-to-do again. The grasshopper plague was TREASURY DOPARTMENT

meant it alright, and it is my opin-lon we need touching up a little,





EL S SERVICE TANDERS NOW IN

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HENRY SNELL MANUFACTURER OF

st-Ol

I met an old farmer from Sibley, Iowa, who volunteered to tell me his sufferings with the grasshoppers as follows: "Year after year I sowed my grain, and it would come as thick

wheat was the Lord's before it was mine, and I said to myself: 'The is the Lord's and the fulness thereof,' and I reckon He knows what He's about. It was pretty tough, though, when I got so poor I couldn't buy seed, but then the State Aid Society sent me some, and when lots of the farmers were sell-ing out their lands to land-sharks, I

asin below, and not a soul injured. It was a fearful experience, an event that not one of the party will ever forget, though they live to be num-bered with the centenarians of future years. Once in the basin be-

low, the party gained the shore and reached their destination by over-land route.-Portland (Or.) Bulle-

ried over the falls down into the

Pious Farmer on Grasshoppers.

When the case came before Judge be issued. Country schoolboys some-Twiss, a domurrer was interposed times lay small wagers on the way by counsel for the Executive con- in which a toad will jump; the way taining several points of demur, that Courts will jump is equally un-which have been published in this certain, and unsafe to risk even an paper. The only important one opinion upon. sustained by the Court is that which denied the jurisdiction of the Court of the berson of the defendant in his official character. In other words, it was claimed that the Court could mandamus case sustains the setion not mandamus the Governor. The other points sustained by the Court are insignificant- when compared with tills. Authorities were freely quoted on both sides of this very Important question. Counsel for the Executive argued that this could certificate of election to a person not not be done; that the Governor was dent in his sphere, and in right of the Governor to decide a the discharge of his official duties was King; that the legislature, the judiciary and the executive were co-ordinate branches of the govern-ment, and one could not command; the other. Counsel for the plaintiff contanded that this could be done

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pending in the southern district of New York the United States is try-

nopolies

coming against him at once some-times, that if he don't just rely on God all the time his 'temper's YORK, 25 .- The Times pretty apt to get spollt, and every-thing goes wrong, and he's the mis-erablest man in the world, while if Washington special says: Belford, of Colorado, will offer in the House tohe'll do the best he can and leave morrow the following: Resolved, That the Attorney. everything with God he's all right."

St. Paul Pioneer Press.

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NOTICE

amounting to about \$137,000 and that William H. Vanderbilt is a great THE ANNUAL MEETING OF THE All above sold by druggists. Hop Bitters Mig. Co., Rochester, N. Y., & Tor owner in these railroads. There is ookholders of the Utah Southern

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H. S. YOUNG, Secretary.

Pacific road which was recently be-gun by order of the attorney gene-ral to restrain the payment of the 3 per cent. dividend on the stock of that company in order to protect the United States against loss upon its advances made on account of inter-est on bonds with which the road was subsidized and built. He also says that the President of the United States has recently nomi-nated as district attorney for the southern district of New York, El-FAMILY southern district of New York, Elliott F. Shepard a son-in-law of Wm. H. Vanderbilt, and that Shep-ard as such district attorney would

and therefore the mandamus cannot have charge of all this important litigation. Belford in behalf of the farmers, producers and forwarders farmers, producers and forwarders of the west, and in behalf of the whole people of the country who are becoming aroused against the enormous combinations of railroad and other interests desires to have the facts called for by his resolution

The idea seems to have gained

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respectively.

opinion upon Court Was n 61 asked to decide whether the Governor was justified in giving a

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the discharge of his official duties question of citizenship, nor to give Am agent of the Texas Pacific

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